Public Services Reform (Scotland) Bill

Royal College of Nursing

The Royal College of Nursing welcomes the opportunity to submit evidence to the Health and Sport Committee on parts 4 and 5 of the Public Services Reform (Scotland) Bill. Our position is summarised here and then described more fully.

1. **Health and social care split** - patients do not experience care as ‘health care’ and ‘social care’. Separating the scrutiny bodies, as this Bill intends, does not reflect the reality of the patient experience.

2. **Links to the quality strategy** - the Bill does not make clear the differing roles of government and the scrutiny bodies in health care quality improvement.

3. **Combining scrutiny and improvement** - a national improvement support function is vital to NHS Scotland. If this is to sit within a scrutiny body there needs to be a strong distinction between the two roles.

4. **Definition of independent health care services** - the Bill needs to clarify the definition of independent healthcare services, particularly those services offering cosmetic and alternative healthcare procedures.

1. **Health and social care split**

The Crerar review recommends that there could be one scrutiny body for health and social care. The policy memorandum to the Bill states that the Scottish Parliament endorses this in principle, that the Government also endorses the principle but considers that it is too soon to move to a single body. It seems at odds with the stated purpose of the Bill not to take the opportunity of creating one scrutiny body for health and social care. It implies that significant change to scrutiny could occur again at a second stage, with all the uncertainty and change this would bring for both the scrutiny bodies involved and the bodies being regulated.

Given that nurses deliver care across sectors, RCN Scotland asks whether there should be a split when it does not reflect services across the continuum of need. The public have a right to high quality nursing care whether they are in hospital, in their own homes or in a care home.

There is an emphasis on integration between health and social care in current government policy. For all major policy issues integration of work streams across departments, agencies and sectors has been a hallmark of this Government. To separate health and social care for the purposes of scrutiny would appear to fly in the face of current public sector policy. We would ask that consideration is given to whether a separation of health and social care scrutiny is wise at this stage.
Regardless of the nature of the new scrutiny body, the terms and conditions and pensions of existing staff in all the bodies affected must be protected.

2. Links to the quality strategy

The Bill sets out the functions of Health Improvement Scotland (HIS) including ‘the general duty of furthering improvement in the quality of health care’. There is some expectation that whilst HIS may have the ‘general duty’ for health care quality in the NHS and independent sector, the improvement functions of government will focus on particular targeted initiatives, as part of its own NHS quality strategy which is currently under development. We are concerned about potential confusion between and overlap of the roles of HIS and of government in its own quality strategy.

The Scottish Health Council has highlighted that almost one in three patients in Scotland say they have encountered a problem with the NHS and half of those fail to complain because they thought it would not make a difference\(^1\). If the Scottish Government wants to realise its aim for the NHS to become a world leader in healthcare quality\(^\text{ii}\), the opportunity that this Bill presents to assist in allowing this must not be wasted by confusing the quality and scrutiny picture.

Donald Berwick of the Institute for Healthcare Improvement (IHI) in Boston addressed delegates at NHS 60 in 2008 and set out his top ten suggestions to improve the quality of care in the NHS\(^\text{iii}\). His first suggestion was to put the patient at the centre and his second suggestion was to stop restructuring. His view was that reorganisation drains energy and productive change, i.e., that which makes a difference to patients, is faster in stability.

If the NHS in Scotland is to improve, any initiatives which drain productive energy and are not focused on the patient should be questioned. We would ask that the proposed improvement functions of HIS fit within the overall approach to improvement activity across health care in Scotland.

3. Combining scrutiny and improvement

Professor Crerar defines external scrutiny as providing ‘independent assurance that services are well-managed, safe and fit for purpose\(^\text{iv}\). Improvement seeks to support service providers towards clinical excellence and to deliver patient-centred health care.

RCN Scotland believes that a nationally coordinated improvement support function is critical to enhancing and developing the quality of health care in Scotland. Providing clear national standards based on the best available evidence, coordinated support for implementation, validated measurement tools and national data capture systems are all vital to support service providers.
The supporting briefing provided for the Cabinet Secretary for Finance’s Statement on Scrutiny Improvement in November 2008 stated that ‘the main responsibility for continuous improvement lies with service providers themselves but with the Government and scrutiny bodies having a key role to facilitate this’. As stated above, the roles and responsibilities of Government and the scrutiny bodies must be made clear to avoid confusion and duplication.

There is also a possibility that there will be higher levels of public interest in the scrutiny role of any such body, rather than its quality improvement role. There is a danger that this would result in more emphasis on the scrutiny role of the organisation and resources could eventually be shifted away from quality improvement towards scrutiny. This would undermine the Government’s intentions regarding quality improvement.

It is worth noting that in England the previous two scrutiny bodies (the Commission for Healthcare Audit and Inspection and the Healthcare Commission) have had very explicit improvement functions. The new scrutiny body, the Care Quality Commission, has emphasised its independence from service and does not have a direct role in improvement\(^\text{v}\). In terms of lessons learned, it might be worth taking evidence as to why the new body in England has evolved in this way.

Huw Davies and colleagues from the University of St Andrews reviewed the evidence on public sector regulation some years ago and set out the pros and cons of systems based on quality assurance or quality improvement. The following table is adapted from Kieran Walshe’s work and is taken from their report\(^\text{vi}\).

<table>
<thead>
<tr>
<th></th>
<th>Quality assurance model</th>
<th>Quality improvement model</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Likely advantages</strong></td>
<td>Regulated organisations pay attention to regulator, take it seriously, and respond readily to its initiatives.</td>
<td>Regulators and regulated organisations work together on improvement and collaborate effectively; costs of regulation are minimised.</td>
</tr>
<tr>
<td><strong>Likely disadvantages</strong></td>
<td>Creative compliance, resistance and lobbying by regulated organisations are likely to subvert purpose of regulation; very high costs of sustained inspection and enforcement that are required.</td>
<td>Regulation may lack teeth and be seen as weak with limited ability to make unwelcome changes happen in regulated organisations; regulator may be seen as too close to or allied with the organisations it regulates.</td>
</tr>
</tbody>
</table>
Whether located within the same body or not, the roles of scrutiny and improvement need separating. We think consideration should be given to whether the simplification of scrutiny and the enhancement of quality are best served by locating both functions in the one body.

4. Definition of independent health care services

This final issue we would like to raise is around the definition of independent health care services. It is possible in the current formulation of the Bill that invasive cosmetic procedures could be undertaken outside of a registered clinic as the definition is of a clinic where services are provided by a medical practitioner. Should another professional set up providing services they would not be regulated as the Bill stands. Consideration should be given to whether this approach is safe or whether it would be better to regulate the procedure, regardless of the setting or professional carrying out the procedure.

This also applies to alternative health treatments which would be regulated if overseen by a medical practitioner, but could remain unregulated in an ‘independent clinic’ run by others.

As independent contractors GP practices could fall under this definition and the Bill is not explicit as to whether it is intended that primary care is regulated through HIS.

It is important that these points are addressed for the benefit of patients and healthcare professionals.

Additional comment

Part 2 of the Bill – under ‘order-making powers’ – appears to allow Ministers to modify many aspects of this Bill via subordinate legislation in the future. RCN Scotland would be concerned about the implications of this lack of full parliamentary scrutiny of significant changes to public bodies.

Conclusion

We have raised a number of questions concerning the Bill as it is important that any changes made to existing organisations, which affect both staff and patients, will significantly improve scrutiny and quality of health and social care. Otherwise the level of change proposed will not be justified. We are not convinced that the Bill, as it is currently set out, achieves its stated objective of simplifying the scrutiny of health and social care and ask that more consideration is given to the questions that we have raised.
Elinor Jayne
Parliamentary and Media Officer
RCN Scotland
14th August 2009

References

i Scottish Health Council (2009) Making it Better

ii NHS Scotland Quality strategy consultation (2009)


v CQC aim vision and values http://www.cqc.org.uk/aboutcqc/whoweare.cfm

vi Davies H, Nutley S, Powell A (2002) Regulating for improvement in public services: A review of activity and issues, Centre for Public Policy and Management, University of St Andrews